IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

R.S.A. No. 887 of 1992
Date of Decision: 06.09.2006

Madan Lal V. Kishori Lal and others

Present : Mr. R.S.Mittal,Senior Advocate with Mr. Atul Gaur, Advocate for the appellant.
Mr. Vishal Aggarwal, Advocate for the respondents.

Uma Nath Singh.J.(oral)

This Regular Second Appeal by the plaintiff arises out of a judgment dated 5.2.1992 passed by the learned Additional District Judge/First Appellate Court, Hisar in Civil Appeal No. 68-CA of 26.8.1989 reversing the judgment and decree passed in favour of the plaintiff by the trial Court vide judgment dated 16.8.1989 in Civil Suit No. 516 of 1989.

At the time of admission of the second appeal, framing of substantial question of law was not necessary. During the course of submissions, learned counsel for the appellant raised various points of law but essentially two points which may fall in the category of substantial questions of law need to be elucidated. They are :-

i) As to whether the inspection of a revenue record under the Punjab Land Revenue Act, 1887 could be sufficient to meet the requirement of reasonable care to ascertain the title over the property in terms of Section 41 of the Transfer of Property Act, 1882.

ii) As to whether any undivided coparcenary property can be transferred on the basis of power of attorney said to have been executed by the minors in favour of one of the adult members of the family.

Learned counsel for the appellant took the Court through the judgments of the courts below and also the relevant documents. He placed reliance on the judgment of this Court reported in **AIR 1984 Punjab & Haryana 212** (Avtar Singh v. Hazura Singh and others) . In para 10 of the said judgment, the Court has held that the inspection of a revenue record would meet the requirement. In another judgment of this High Court reported in **1987 P.L.J. 646** (JaganNath and others v. Raj Kumar and another), the Court has held that vendee who accepts the transfer on the faith of entries in record of rights (jamabandi) in favour of his transferor is protected under Section 41 of the Transfer of Property Act, 1882. He also placed reliance on a Full Bench judgment of Lahore High Court reported in **AIR (34) 1947 Lahore 147 (**Shamsher Chand v. Bakhshi Mehr Chand and others), in which the Court has held that vendee accepting transfer of agricultural land on faith of entries in favour of his transferors in record-of-rights is protected under Section 41 of the Transfer of Property Act, 1882.

Admittedly, the plaintiff inspected the jamabandies and placed reliance on Ex.P7 jamabandi for the year 1968-69, Ex.P8 jamabandi for the year 1973-74 and Ex.P9 jamabandi for the year 1978-79. From the aforesaid jamabandies, being the revenue record, it appears that the predecessors-in-interest of Jai Pal Singh, the vendor of the plaintiff, were the owners of the property.

As regards the second point, transfer of coparcenary property of minors on the strength of Ex.DW8/1 (General Power of Attorney by Gurbax

Singh), admittedly, on the date of execution of this power of attorney, two family members of the coparcenary property, namely, Harbans Kaur and Surinder Singh, were minors. Besides this, it appears from the statement of DW5 Surinder Singh that he had not given any power of attorney in favour of Gurbax Singh said to be author of sale-deed Ex.D1.

Learned counsel for the respondent-defendants submitted that as the property in question was intially not agricultural land, therefore, reflection of ownership in revenue record was not necessary. He also submitted that in the written statement of respondent-defendants, a plea was taken that the coparcenary property was partitioned by way of sale-deed under legal necessity which remained unrebutted by the plaintiff. However, he admitted that at the time of execution of general power of attorney Ex. DW8/1, Harbans Kaur and Surinder Singh were minors.

I have carefully considered the rival submissions and I am not inclined to take a different view as regards the requirement of Section 41 of the Transfer of Property Act from the view espoused by two judgments of this Court and full Bench judgment of Lahore High Court. Accordingly, I hold that simple inspection of jamabandi by the plaintiff-appellant to find out as to whether Jaipal Singh is the owner of the property in question was sufficient. As regards the second point, I am of the view that simple unrebuttal of an averment of the written statement without there being no such issue before the trial Court is not sufficient to brushe-aside this question of law. Besides, Surinder Singh PW5 brother of Gurbax Singh, author of sale-deed Ex.D1 in favour of the defendants, also assailed the credibility of this document. Accordingly, the sale-deed in respect of minors Harbans Kaur and Surinder Singh is held to be invalid.

As regards the nature of property, in the pleadings, the plaintiff has sought the relief for demolishing the four wall around the property as also for possession of the plot including a Kotha. Though the plaintiff-appellant urged that he was forcibly dispossessed from the property but the fact remains that there was an existing construction on the suit property, hence, the property continued in possession of the defendants.

Under these circumstances, to hold that the plaintiff is unaware of the presence of defendants on the property is difficult, although, there is compliance of Section 41 of the Transfer of Property Act, 1882. Besides, it also appears from the record that there was no proceedings instituted in respect of on account of dispute under Section 145 Cr.P.C. Thus, the possession of the defendants over the property is established. However, in respect of the right of minors, the sale-deed Ex.D1 is held to be invalid and hence set-aside. The plaintiff would be entitled to get the share of the minors as he has purchased the property vide a valid sale-deed Ex.P2. Accordingly, the Regular Second Appeal Is partly allowed and the impugned judgment is partly set-aside.

September 6 , 2006 **(Uma Nath Singh)**
'ravinder' **Judge**